

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MASSACHUSETTS

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CLERK'S OFFICE
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CASE NO.:

CAROL JARVIS,
Plaintiff

) 05-30088-MAP

U.S. DISTRICT COURT
WESTERN DISTRICT OF MASSACHUSETTS

v.

THE UNITED STATES
OF AMERICA,
Defendant

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

THE PARTIES

1. The Plaintiff, Carol Jarvis, is an individual and natural person currently residing at 269 Stony Hill Road, Apartment G3-110, Wilbraham, Massachusetts.
2. The Defendant, The United States of America, is a governmental body.

JURISDICTION

3. This is an action for personal injuries and property damage arising under the Federal Tort Claims Act, 28 U.S.C. Sections 1346(b), 2671-2680 as hereinafter more fully appears.

FACTUAL ALLEGATIONS

4. On or about April 17, 2002 the Plaintiff was operating her motor vehicle on Allen Street, Springfield, Hampden County, Massachusetts.

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CL

5. On said date the Defendant was the registered owner of a 2000 Dodge Stratus, which was being operated on said date by it's agent/employee, Robert Uselton, on Allen Street, Springfield, Hampden County, Massachusetts.

6. At all times material hereto, Robert Uselton was an agent/employee of the Department of the Navy, an agency of the Defendant, The United States of America.

7. Without any prior warning the Defendant's motor vehicle operated by Robert Uselton, collided into the rear end of the Plaintiff's motor vehicle.

8. The Plaintiff was immediately taken by ambulance to Baystate Medical Center in Springfield, Hampden County, Massachusetts for medical treatment.

9. As a direct and proximate result of the aforementioned accident, the Plaintiff suffered severe physical injuries, great pain of body and mind, which required medical attention and treatment, and incurred expenses for medical treatment and property damage.

10. Pursuant to 28 U.S.C. Section 2675 (c), the claim set forth herein was presented to the Department of the Navy, Naval Legal Service Office Mid-Atlantic located at 9620 Maryland Avenue, Suite 100, Norfolk, VA on May 14, 2002. Additional documentation supporting Plaintiff's claim was forwarded to said Department on May 29, 2002 and December 11, 2002.

11. More than six months before this action was commenced, the claim set forth herein was presented to the Department of the Navy, Naval Legal Service Office Mid-Atlantic. Said Agency having failed to make a final disposition of the claim within that time, the Plaintiff deems such failure to be a denial thereof.

COUNT I-AGENCY/NEGLIGENCE

12. The Plaintiff realleges and reaffirms the allegations contained in paragraphs one (1) through eleven (11) of her complaint and incorporates the same herein by reference.

13. On April 17, 2002 the Defendant, The United States of America, was the registered owner of the motor vehicle operated by Robert Uselton, which motor vehicle was involved in a violent collision with the Plaintiff's motor vehicle, in which the Plaintiff, Carol Jarvis, was injured.

14. At all times material hereto, Robert Uselton, was operating the Defendant, The United States of America's, motor vehicle, under the control of the Defendant, The United States of America.

15. At all times material hereto, Robert Uselton was an employee of the Department of the Navy, an agency of the Defendant, The United States of America, and was acting within the scope of his office or employment.

16. If the Defendant, The United States of America, were a private person, it would be liable to the Plaintiff in accordance with the laws of the Commonwealth of Massachusetts.

17. As a direct and proximate result of the negligence of Robert Uselton, operator of the Defendant, The United States of America's motor vehicle, under the Defendant, The United States of America's control and as it's agent, the Plaintiff, Carol Jarvis, sustained injuries to her neck and back and was otherwise seriously injured, suffered great pain of body and mind, incurred expenses for medical attention and hospitalization in a sum in excess of Thirty Two Thousand (\$32,000.00) Dollars, and for the total loss of her motor vehicle which had a fair market value of Twenty Five Thousand (\$25,000.00) Dollars at the time of said accident. Moreover, the Plaintiff will continue to suffer similar damage in the future by reason of the possible permanency of her injuries.

18. The aforesaid injuries were caused solely by the Defendant, The United States of America, its agents, servants, or employees, and without any negligence on the part of the Plaintiff, Carol Jarvis contributing thereto.

WHEREFORE, the Plaintiff, Carol Jarvis, demands judgment against the Defendant The United States of America, on Count I of her complaint, in the amount of Two Hundred Seventy Five Thousand (\$275,000.00) Dollars, interest, costs of this action, and any other relief this Honorable Court deems proper.

COUNT II-RESPONDEAT SUPERIOR

19. The Plaintiff realleges and reaffirms the allegations contained in paragraphs one (1) through eighteen (18) of her complaint and incorporates the same herein by reference.

20. At all times material hereto Robert Uselton was employed by the Defendant, The United States of America.

21. Robert Uselton's collision into the Plaintiff, Carol Jarvis' motor vehicle, occurred during the course of his employment with the Defendant, The United States of America.

22. If the Defendant, The United States of America, were a private person, it would be liable to the Plaintiff in accordance with the laws of the Commonwealth of Massachusetts.

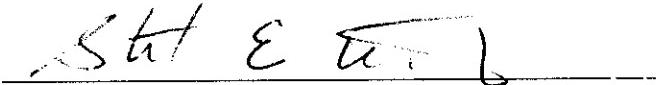
23. As a direct and proximate result of the negligence of Robert Uselton, operator of the Defendant, The United States of America's motor vehicle, under the Defendant, The United States of America's control and as it's agent and/or employee, the Plaintiff, Carol Jarvis, sustained injuries to her neck and back and was otherwise seriously injured, suffered great pain of body and mind, incurred expenses for medical attention and hospitalization in a sum in excess of Thirty Two Thousand (\$32,000.00) Dollars, and for the total loss of her motor vehicle which had a fair market value Of Twenty Five Thousand (\$25,000.00) Dollars at the time of said accident. Moreover, the Plaintiff will continue to suffer similar damage in the future by reason of the possible permanency of her injuries.

24. The aforesaid injuries were caused solely by the Defendant, The United States of America, its agents, servants, or employees, and without any negligence on the part of the Plaintiff, Carol Jarvis contributing thereto.

WHEREFORE, the Plaintiff, Carol Jarvis, demands judgment against the Defendant, The United States of America, on Count II of her complaint, in the amount of Two Hundred Seventy Five Thousand (\$275,000.00) Dollars, interest, costs of this action, and any other relief this Honorable Court deems proper.

THE PLAINTIFF,
CAROL JARVIS,
BY HER ATTORNEY,

Dated: April 7, 2005


Stuart E. Weitz, Esquire
BBO#: 566062

WEITZ & WEITZ
95 State Street, Suite 715
Springfield, MA 01103
(413) 785-1597
FAX: (413) 736-4730

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of in that ng the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS		DEFENDANTS				
Jarvis, Carol (b) County of Residence of First Listed Plaintiff <u>Hampden</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>		The United States Of America <small>County of Residence of First Listed Defendant _____</small> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>				
(c) Attorney's (Firm Name, Address, and Telephone Number) <u>Weitz & Weitz, 95 State Street, Suite 715</u> <u>Springfield, MA 01103 (413) 785-1597</u>		<small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</small> <small>Attorneys (If Known)</small>				
II. BASIS OF JURISDICTION <small>(Place an "X" in One Box Only)</small>		III. CITIZENSHIP OF PRINCIPAL PARTIES <small>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</small>				
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		<small>Citizen of This State</small> <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5				
<input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>		<small>Citizen of Another State</small> <input type="checkbox"/> 2 <input type="checkbox"/> 3 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6				
		<small>Citizen or Subject of a Foreign Country</small> <input type="checkbox"/> 3 <input type="checkbox"/> 4 Foreign Nation <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 7				
IV. NATURE OF SUIT <small>(Place an "X" in One Box Only)</small>						
<small>CONTRACT</small> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<small>TORTS</small> <small>PERSONAL INJURY</small> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<small>FORFEITURE/PENALTY</small> <small>PERSONAL INJURY</small> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <small>PERSONAL PROPERTY</small> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<small>BANKRUPTCY</small> <small>PROPERTY RIGHTS</small> <small>LABOR</small> <small>SOCIAL SECURITY</small> <small>FEDERAL TAX SUITS</small>	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influence and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenges 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<small>REAL PROPERTY</small> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<small>CIVIL RIGHTS</small> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights	<small>PRISONER PETITIONS</small> <input type="checkbox"/> 510 Motions to Vacate Sentence <small>Habeas Corpus:</small> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<small>Appeal to District Judge from Magistrate Judgment</small>			
V. ORIGIN <small>(Place an "X" in One Box Only)</small>						
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 4 Reinstated or Reopened		<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7
<small>Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):</small> <u>28 USC 1346(b), 2671-2680</u>						
VI. CAUSE OF ACTION <small>Brief description of cause:</small> <u>Personal injury/Federal Tort Claims Act</u>						
VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMANDS <u>\$275,000</u>		<small>CHECK YES only if demanded in complaint</small> JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
VIII. RELATED CASE(S) IF ANY <small>(See instructions):</small>		<small>JUDGE</small>		<small>DOCKET NUMBER</small>		
<small>DATE</small> <u>April 14, 2005</u> <small>SIGNATURE OF ATTORNEY OF RECORD</small>						
<small>RECEIPT #</small> <u>305914</u> <small>AMOUNT</small> <u>APPLYING IFF</u> <u>JUDGE</u> <u>MAG. JUDGE</u>						

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Carol Jarvis v. The
United States of America

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Name

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Stuart E. Weitz

ADDRESS 95 State Street, Suite 715, Springfield, MA 01103

TELEPHONE NO. (413) 785-1577